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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,435	07/21/2003	Austin Poole	71422-0006	1434

20915 7590 11/19/2004

MCGARRY BAIR PC
171 MONROE AVENUE, N.W.
SUITE 600
GRAND RAPIDS, MI 49503

EXAMINER


THOMPSON, HUGH B

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/604,435	Applicant(s) POOLE ET AL.	
	Examiner Hugh B. Thompson II	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 12-18, 21-25 and 27 is/are rejected.
- 7) ☒ Claim(s) 7, 11, 19, 20, 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,8-10,12-18, 21-25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntyre #5,628,383. McIntyre discloses a tree stand assembly 12 comprised of platforms 14, 18, 25 (second), platforms 14 and 18 having pivoting members (unnumbered), a ratchet 28 that adjusts the stand relative to the tree 11, frame elements 22, 23, 24, 21, 19, and tree engaging elements 15, 16, 17 (adjustable), (second platform tree engaging elements unnumbered).

Allowable Subject Matter

Claims 7, 11, 19, 20, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The primary reason for the allowable subject matter of the claims is the inclusion of a telescopic attitude adjuster that allows the first and second members to be telescopically united. The prior art of record fails to teach or suggest the claimed features absent the applicant's own disclosure.

Response to Arguments

Applicant's arguments filed in the Amendment of 9-7-04 have been fully considered but they are not persuasive. The applicant's attention is drawn to page 3 of the remarks. In each of the independent claims, the applicant fails to set forth any particular structure associated with the attitude adjuster. Further, the location of the attitude adjuster relative to the vertical structure is not a patentably distinct feature as the vertical structure is not apart of the claimed invention. In addition, the ratchet of McIntyre does permit planar adjustment of the tree stands relative to the tree. The applicant should note that it is clear to one of ordinary skill that as the ratchet is loosened relative to the tree, the stand it self would tend to "fall" because of gravity. As the ratchet is tensioned, the stand is fixed in its horizontal use position, thus permitting the stand to be adjusted vertically relative to the tree. It appears that the applicant should further distinguish the attitude adjuster by including distinguishing structure thereof relative to the tree stand. See for example claim 7. Further, the engagement of the tree engaging portions of the stand of McIntyre is either in compression or tension relative to opposed sides of the tree. The applicant should recite the structure of those tensioned or compressive components and not rely upon the broad recitation of an "adjustable mounting", which clearly the platforms of McIntyre are capable. The applicant appears to rely upon the functioning of the instant invention and its associated structure, while not noting that the stand of McIntyre "reads on" the argued functions. As such the rejection is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

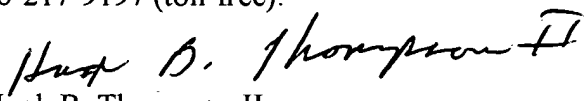
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (703) 305-0102. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hugh B. Thompson II
Primary Examiner
Art Unit 3634

November 15, 2004